

## Oil Pollution Act Provisions on Reporting

### Introduction

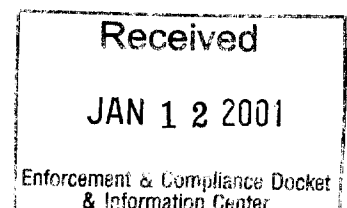
The Oil Pollution Act of 1990 was enacted in response to the Exxon Valdez oil spill of March 1989. This statute delegated authority to EPA for Title 33 § 1321 and § 1361. These provisions do not pose any outright barriers to electronic reporting. Several potential barriers to electronic reporting were identified that require something to be done in a paper format, including: requiring the Administrator to notify specific people in writing and sending a notice of appeal by certified mail. This language does not necessarily preclude these activities from being done electronically as well, but it is specified that the activities must be done in a certain way. There are also several places where language in the statute has an ambiguous affect on electronic reporting. These include whether immediately notifying someone could be done electronically, whether papers, books, or documents could include an electronic format, and whether the publication of reports and plans could be done electronically.

### USCA Title 33 § 1321 Oil and Hazardous Substance Liability

Section 1321(b) states that Congress has declared that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon navigable waters of the United States and other defined waterways. The Administrator is required to develop regulations designating as hazardous substances (other than oil), any elements and compounds which when discharged in any quantity into defined waterways, present a danger to public health. The President is required to determine, by regulation, the quantity of oil and hazardous substances whose discharge may be harmful to the public health or welfare of the environment. Section 1321(b)(5) requires that any person in charge of a vessel or an onshore or offshore facility, shall notify the appropriate agency of any knowledge of a discharge of oil or hazardous substance from such vessel or facility. This section does not specify the method of notification and therefore may allow for electronic notification, but there may be some question about the immediacy of this method.

1321(b)(5) Policy against discharges of oil or hazardous substances - Notification	Ambiguous
(...) The Federal agency shall immediately <b>notify</b> the appropriate State agency (...). Any such person (...) who fails to <b>notify</b> immediately such agency of such discharge(...). <b>Notification</b> received pursuant to this paragraph shall not be used (...) in any criminal case (...).	

Section 1321(b)(6) specifies administrative penalties. Any owner, operator, or person in charge of any vessel, or onshore or offshore facility from which oil or a hazardous substance is discharged in violation of this section or who fails or refuses to comply with any regulation in this section, may be assessed a class I or class II civil penalty by the Secretary of the Department in which the Coast Guard is operating or the Administrator. The class I and class II civil



penalties may not exceed \$10,000 per violation. Before assessing a civil penalty, the Administrator or Secretary shall give written notice to the person being assessed such penalty. Because this section specifies that the notice must be written, it poses a potential barrier to electronic notification.

<b>1321(b)(6)(B) Classes of Penalties - Notification</b>	<b>Potential barrier</b>
(...) the Administrator or Secretary (...) shall give to the person to be assessed such penalty <b>written notice</b> of the (...) proposal to assess the penalty (...).	

<b>1321(b)(6)(C)(i)(ii) and (iii) Public notice</b>	<b>No barrier</b>
(...) the Administrator or Secretary (...) shall provide <b>public notice</b> of (...). (...) Any person who comments on a proposed assessment (...) shall be given <b>notice</b> of any hearing (...). (...) If the Administrator or Secretary denies a hearing (...) they shall provide to the petitioner, (...) <b>notice</b> of and the reasons for such denial.	

Section 1321(b)(6)(G) allows any person against whom a civil penalty is assessed to file a notice of appeal in court by sending a copy of the notice by certified mail to the Administrator or Secretary and the Attorney General. The fact that the notice must be sent by certified mail may pose a barrier to electronic submission.

<b>1321(b)(6)(G)(2) Judicial review - Notice of Appeal</b>	<b>Potential barrier</b>
Any person against whom a civil penalty is assessed (...) may obtain review of such assessment by <b>filing a notice of appeal</b> in such court (...) and by simultaneously <b>sending a copy of such notice by certified mail</b> to the Administrator or Secretary (...). The Administrator or Secretary shall promptly file in such court a <b>certified copy of the record</b> (...).	

Section 1321(b)(6)(I) allows the Administrator or Secretary to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings. This section does not specify the form of papers, books, or documents and it is unclear whether they may be produced electronically.

<b>1321(b)(6)(I) Subpoenas</b>	<b>Ambiguous</b>
The Administrator or Secretary (...) may issue subpoenas for the (...) production of relevant <b>papers, books, or documents</b> (...). (...) the district court of the United States (...), upon application by the United States and after <b>notice</b> to such person, shall have jurisdiction to issue an order requiring such person to appear and (...) produce <b>documents</b> (...).	

Section 1321(d) requires the President to prepare and publish a National Contingency Plan for removal of oil and hazardous substances. The language in this section does not preclude the electronic preparation of this Plan.

<b>1321(d)(1) and 1321(d)(4) National Contingency Plan</b>	<b>Ambiguous</b>
(d)(1)The President shall prepare and <b>publish</b> a National Contingency Plan (...).	
(d)(4)After <b>publication</b> of the National Contingency Plan (...).	

Section 1321(d)(2)(D) requires the National Contingency Plan to include a system of surveillance and notice designed to safeguard against, as well as ensure earliest possible notice of, discharge of oil and hazardous substances to the appropriate State and Federal agencies. There is no barrier to electronic notification.

<b>1321(d)(2)(D) National Contingency Plan - Notification</b>	<b>No barrier</b>
a system of surveillance and <b>notice</b> designed to safeguard against as well as ensure earliest possible <b>notice</b> of discharges of oil (...).	

Section 1321(j)(2) requires the Secretary of the Department in which the Coast Guard is operating to establish a National Response Unit at Elizabeth City, North Carolina. The Secretary shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and of information regarding previous spills to be disseminated as appropriate to response groups, area committees, Federal and State agencies, and the public. This section is beneficial to electronic reporting since the database is maintained electronically.

<b>1321(j)(2)(A) National Response System</b>	<b>No barrier</b>
shall compile and maintain a comprehensive <b>computer list</b> of spill removal resources, personnel, and equipment that is available (...) and of <b>information</b> (...), which shall be <b>disseminated</b> as appropriate (...).	

Section 1321(j)(4) requires the President to establish Area Committees comprised of personnel from Federal, State, and local agencies. Each Committee is required to prepare and submit an Area Contingency Plan to the President for approval. The Plan must include any information that the President requires. There is no requirement as to how the Plan is submitted and therefore could be submitted electronically.

<b>1321(j)(4)(C) and (C)(vii) National Response System</b>	<b>No barrier</b>
Each area Committee shall <b>prepare and submit</b> to the President for approval an Area Contingency Plan (...).	
(vii) include any other <b>information</b> the President requires (...).	

Section 1321(j)(5) requires the President to issue regulations which require an owner or operator of a tank vessel or facility to prepare and submit a plan to the President for responding to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

There are no requirements as to the method of submission of the plan, and therefore it could be done electronically.

<b>1321(j)(5)(A), (C)(vi), (D), and (F) Tank vessel and facility response plans</b>	<b>No barrier</b>
(A)(...) require an owner or operator of a tank vessel or facility (...) to <b>prepare and submit</b> to the President a plan (...).	
(C)(vi) be <b>resubmitted</b> for approval(...).	
(D) (...) any response plan submitted under this paragraph (...).	
(F) (...) not later than 2 years after the date of the <b>submission</b> to the President of a plan (...).	

Section 1321(j)(7) requires the President to periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required and under relevant tank vessel and facility response plans. The President may publish annual reports on these drills. It is ambiguous as to whether the reports could be written electronically.

<b>1321(j)(7) Area Drills and Annual Reports</b>	<b>Ambiguous</b>
(...) The President may <b>publish annual reports</b> on these drills (...).	

Section 1321(m) specifies that the Administrator or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish records, make reports, install, use, and maintain monitoring equipment and methods, and provide other information. The Administrator and Secretary are also authorized to enter and inspect any facilities, including ones in which records are maintained, and have access to and copy any records, take sample, and inspect monitoring equipment or methods. Section 1321(m)(2)(D) requires that any records, reports, or information be subject to public access and disclosure requirements. This section does not specify the format by which reports, records, and other information is maintained and therefore does not pose a barrier to maintaining this information electronically.

<b>1321(m)(2)(A), (B)(i), and (B)(ii) and (D) Recordkeeping</b>	<b>No barrier</b>
(A)(...) require the owner or operator of a facility (...) to establish and maintain <b>such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information</b> as the Administrator or Secretary (...) may require (...).	
(B)(i) (...) including any facility at which any <b>records are required to be maintained</b> (...).	
(B)(ii) (...) have access to and <b>copy any records</b> (...).	
(D) Any <b>records, reports, or information</b> obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to <b>records, reports, and information</b> obtained (...).	

Section 1361 authorizes the Administrator to prescribe regulations necessary to carry out the functions under this chapter. Section 1361(c) requires each recipient of financial assistance to keep records prescribed by the Administrator. There is no specification as to how the records are kept and therefore there is no barrier to maintaining them electronically.

<b>1361(c) Recordkeeping</b>	<b>No barrier</b>
Each recipient of financial assistance under this chapter shall keep such <b>records</b> as the Administrator shall prescribe (...).	

Section 1361(d) provides the Administrator and the Comptroller General with access to any books, documents, papers, and records that are pertinent to grants received under this chapter. There is no specific barrier to maintaining these sources of information electronically.

<b>1361(d) Audit</b>	<b>No barrier</b>
The Administrator and the Comptroller General of the United States (...) shall <b>have access for the purpose of audit and examination, to any books, documents, papers, and records</b> (...).	

Section 1361(e) provides for awards to industrial organizations and political subdivisions of states which demonstrate technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. Section 1361(e)(3) specifies that several individuals be notified of the awards, but the method of notification is not specified and therefore does not create a barrier to it being done electronically.

<b>1361(e)(3) Awards for outstanding technological achievement - Notification</b>	<b>No barrier</b>
The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be <b>notified</b> of the award by the Administrator (...).	